



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

May 15, 2003

H.R. 1836 **Civil Service and National Security Personnel Improvement Act**

*As ordered reported by the House Committee on Government Reform
on May 8, 2003*

SUMMARY

H.R. 1836 would make governmentwide and agency-specific amendments to civil service law. Major provisions of the bill with budgetary impacts would:

- Establish a Human Capital Performance Fund across executive agencies to award high-performing employees;
- Apply Occupation Safety and Health Administration (OSHA) standards concerning asbestos exposure when determining the eligibility of certain federal employees for hazardous pay;
- Prohibit fees from being charged to federal employees to administer flexible spending accounts;
- Raise the current limit on overtime pay for certain federal employees;
- Raise the pay cap for Senior Executive Service employees;
- Authorize funds to pay any difference between civilian and military compensation for federal employees called to active military duty; and
- Grant broad new personnel authorities to the National Aeronautics and Space Administration (NASA) and the Department of Defense (DoD).

Most of the costs of implementing the bill would be funded through appropriations. Assuming appropriation of the necessary amounts, CBO estimates that such costs would total about \$300 million in 2004 and about \$7.6 billion over the 2004-2008 period. Those

amounts assume a savings of \$1.5 billion over the 2004-2008 period from applying OSHA regulations on asbestos exposure to cases involving back pay for DoD workers. This estimate does not include costs for implementing section 102, which would provide DoD with additional flexibility to operate its human resources management system. CBO does not have sufficient information about how DoD might implement those authorities to estimate their cost.

We also estimate that enacting H.R. 1836 would increase direct spending by about \$200 million over the 2004-2013 period because the bill would increase retirement benefits for certain workers with part-time service.

H.R. 1836 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). However, CBO estimates that any costs to state, local, or tribal governments from that mandate would be insignificant and would not, therefore, exceed the threshold established in UMRA (\$59 million in 2003, adjusted annually for inflation). The bill contains no new private-sector mandates as defined in UMRA.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 1836 is shown in the following table. The costs of this legislation fall within many budget functions.

	By Fiscal Year, in Millions of Dollars				
	2004	2005	2006	2007	2008
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Human Capital Performance Fund					
Estimated Authorization Level	500	509	520	531	545
Estimated Outlays	400	507	518	529	542
Continue Human Capital Performance Fund Raises					
Estimated Authorization Level	0	473	1,035	1,640	2,291
Estimated Outlays	0	454	1,012	1,616	2,265
Asbestos Differential Pay Savings					
Estimated Authorization Level	-290	-290	-290	-290	-290
Estimated Outlays	-290	-290	-290	-290	-290
Modification of Overtime Pay Cap					
Estimated Authorization Level	107	147	151	156	161
Estimated Outlays	103	145	151	156	161
					Continued

	By Fiscal Year, in Millions of Dollars				
	2004	2005	2006	2007	2008
Administration of Flexible Spending Accounts					
Estimated Authorization Level	22	28	33	39	44
Estimated Outlays	20	27	33	38	44
Senior Executive Service and Performance					
Estimated Authorization Level	23	31	31	31	31
Estimated Outlays	21	31	31	31	31
Reservists Pay					
Estimated Authorization Level	40	18	14	10	7
Estimated Outlays	37	21	14	10	7
NASA Personnel and Workforce Practices					
Estimated Authorization Level	15	17	19	22	22
Estimated Outlays	6	13	18	21	22
Total					
Estimated Authorization Level	417	933	1,513	2,139	2,811
Estimated Outlays	297	908	1,487	2,111	2,782

CHANGES IN DIRECT SPENDING

CSRS computation for part-time service					
Estimated Authorization Level	4	10	14	18	21
Estimated Outlays	4	10	14	18	21

NOTE: NASA = National Aeronautics and Space Administration; CSRS = Civil Service Retirement System.

This estimate excludes any costs for implementing section 102, which would create a new human resources management system for DoD; allow DoD to give certain employees outside the United States the same pay and benefits as the Foreign Service or Central Intelligence Agency; require DoD, to the maximum extent practicable, to adjust rates of compensation for civilian employees at the same rate as military personnel; and allow DoD to provide additional pay to attract highly qualified experts. All of these authorities could potentially affect federal spending.

CBO cannot estimate the budgetary impact of implementing these provisions because DoD has not indicated how it would supplant—or improve upon—the personnel system currently governing the department; how many employees would benefit from receiving the same pay and benefits as the Foreign Service or Central Intelligence Agency (the number is classified); whether or how it might institute pay parity between its civilian employees and military

members; or how many people it might hire under the authority to provide additional pay to attract highly qualified experts.

BASIS OF ESTIMATE

For this estimate, CBO assumes that H.R. 1836 will be enacted by the end of fiscal year 2003. We assume that the necessary amounts will be appropriated for each year and that outlays will occur at historical rates for similar programs.

Spending Subject to Appropriation

CBO estimates that seven sections of the bill would have significant impacts on spending subject to appropriation. The following paragraphs discuss those costs.

Human Capital Performance Fund. Section 401 of the bill would authorize the appropriation of \$500 million in 2004 and such sums as necessary for each subsequent year for the Office of Personnel Management (OPM) to establish a Human Capital Performance Fund. The fund would be available for agencies to give pay raises to employees based on superior performance or the possession of skills critical to an agency's mission. Those increases in pay would be in addition to regular cost-of-living pay raises given to civilian federal employees and would represent permanent increases in an employee's base pay. Federal civilian pay and benefits currently cost about \$140 billion governmentwide.

H.R. 1836 would allow only the initial pay raise to be made from the Human Capital Performance Fund. For this estimate, CBO assumes that the Human Capital Performance Fund would be continued at \$500 million a year, adjusted for anticipated inflation, for the next five years. We estimate that the program would cost \$2.5 billion over the 2004-2008 period.

In subsequent years, after pay raises made through the Human Capital Performance Fund are in place, each federal agency would have to cover the cost of continuing the pay raise from its regular appropriation. CBO estimates that maintaining the resulting higher pay levels and adjusting them for anticipated cost-of-living increases would cost participating agencies \$5.2 billion over the 2005-2008 period. Thus, in total, we estimate that implementing this provision would cost \$7.7 billion over the next five years.

Asbestos Differential Pay. Under section 204, federal wage-grade employees would be subject to the same standards as general schedule employees when determining eligibility for environmental differential pay (EDP) due to exposure to asbestos. Under current law,

general schedule employees are entitled to 8 percent hazard differential pay if they are exposed to asbestos that exceeds the permissible exposure limits established by OSHA. The current EDP standard for wage-grade employees entitles them to the same 8 percent of pay but does not set an objective measure for determining the level of asbestos exposure necessary to qualify for EDP. In several instances when wage-grade employees have sought back pay for EDP, arbitrators have found in favor of the employees when asbestos levels were below those consistent with OSHA standards. Based on information from DoD on prior and pending arbitration rulings, CBO expects that implementing section 204 would reduce the amount of back pay federal agencies would be required to pay for EDP due to asbestos exposure. Assuming those cases would be handled administratively, CBO estimates that establishing OSHA standards for asbestos EDP would save \$290 million in 2004 and \$1.5 billion over the 2004-2008 period, assuming appropriations to DoD and other affected agencies are reduced by the estimated amounts.

Modification of the Overtime Pay Cap. Under current law, overtime pay for work in excess of 40 hours per week for federal managers, supervisors, and other employees exempted under the Fair Labor Standards Act (FLSA) is limited to a set rate of roughly \$32 an hour (one and a half times the normal rate for a general schedule (GS) grade 10 (GS-10), step 1, employee). Employees who earn salaries above GS-12, step 5, receive overtime pay at a rate that is, on an hourly basis, less than their regular pay.

Section 201 would raise the overtime pay rate to either one and one-half times the hourly rate of a GS-10, step 1, or the hourly rate of the basic pay of the employee, whichever is greater. Although this change would not affect employees at GS-12, step 5, and lower, those above this pay rate would earn their hourly rate of pay for overtime work. Based on information from the Office of Personnel Management (OPM) on the number of FLSA-exempted employees at each grade and information on overtime worked, CBO estimates that implementing the proposal would cost approximately \$100 million in 2004 and \$0.7 billion over the 2004-2008 period.

About 680,000 federal employees at GS-10 and above are exempt from the FLSA, which is about 36.7 percent of the general schedule (and related) workforce. For this estimate, CBO assumes that this employee group worked 37 percent of all overtime performed by FLSA-exempt employees. We also assume that those overtime hours are distributed proportionately across GS-10 through GS-13 employees, with GS-14 and GS-15 employees working one-third of the hours. CBO estimated the cost of the proposal by calculating the cost of those overtime hours at the set rate under current law and then calculating the cost of that same amount of overtime at the set rate or the employee's hourly rate, whichever is greater.

Federal Flexible Benefits Plan Administrative Costs. Under current law, federal employees will be allowed to enroll in a flexible spending account (FSA) program offered

through the Office of Personnel Management (OPM) beginning in May 2003. A FSA is an employee benefit that allows employees to set aside money, on a pre-tax basis, for health care and dependent care expenses. The administrative costs to the program will be paid by participating employees based on a formula to collect \$48 annually for each health care account and 1.5 percent of the total dependent care account.

Section 211 would prevent any fees from being charged to federal employees for the administrative costs to operate the FSAs. Based on information from the federal judiciary's FSA program and the operation of private FSAs, CBO estimates that about 10 percent of federal employees will initially enroll in the plan, and we expect participation to grow to about 20 percent of federal employees over the next five years. Under the bill, administrative costs of operating the plans would be subject to appropriation of the necessary amounts. Based on the fees OPM plans to charge participants and expected employee participation rates, we estimate that implementing this provision of the bill would cost about \$160 million over the 2004-2008 period.

Senior Executive Service (SES) Performance Provisions. Under current law, SES employees are paid at six different pay levels. Base pay is capped at Level IV of the Executive Schedule (\$134,000) and the maximum pay with the locality-based comparability adjustment is set at Level III of the Executive Schedule (\$142,500). SES employees receive the same annual across-the-board pay raises and locality-based comparability adjustments that GS employees receive.

Effective January 1, 2004, section 209 would eliminate the six SES pay levels and raise the cap on base pay to \$142,500. Locality adjustments to SES pay would be eliminated. The proposal would affect roughly 7,900 employees.

The legislation specifies that no SES employee would experience a reduction in the rate of basic pay in the first year after this legislation is enacted, and CBO assumes that this would continue to be true after the first year. Because the salaries of many SES employees are at the current caps (or are expected to reach such caps over the next few years), raising the cap on base pay would allow those employees to get pay raises. Assuming that executive level salaries (and thus the caps) are raised by the full amount authorized under current law by the Ethics Reform Act, CBO estimates that the legislation would cost \$145 million over the 2004-2008 period.

Federal Employee Reservists Pay. Section 212 would authorize an increase in federal salaries to pay for any difference between civilian and military compensation for federal employees called to active duty in the uniformed services or National Guard following enactment of the bill. CBO estimates that implementing this provision would cost

\$37 million in 2004 and \$89 million over the 2004-2008 period. Those payments would be subject to the availability of appropriated funds.

Based on information from DoD, CBO estimates that federal employees account for approximately 120,000 positions or almost 15 percent of the total Ready Reserve (which includes the Selected Reserve and the Individual Ready Reserve/Inactive National Guard). For this estimate, we assume that 15 percent of those reserves called to active service at any time are federal employees.

In a 2000 DoD survey of 35,000 reserve personnel, 59 percent of all reservists (including federal employees) reported either no difference in their income while on active-duty military status, or an increase in their income while on active duty. Forty-one percent reported a loss of income during mobilization and deployment. For this estimate, CBO assumes that these self-reported survey data are accurate and applicable to the current call-up of reservists and National Guard forces.

Of the 41 percent of survey respondents who reported a loss of income during military reserve service, most (about 70 percent) said their income was reduced by \$3,750 or less while on active duty. On the other hand, some reported much larger losses. For example, approximately 7 percent of those reporting an income loss indicated a loss of \$37,000 to \$50,000 annually. Considering the loss in income reported by all survey respondents and the number who reported no loss or an increase in salary, CBO estimates that the average annual reduction in salary while serving in the active-duty military is about \$3,000.

The cost of implementing the legislation following enactment depends on the size of the future reserve force, which in turn depends on the duration of the military operation in Iraq and the force size required for it, as well as the size and duration of any future military conflicts, all of which very are uncertain. For this estimate, CBO assumes that the total number of reservists on active duty will decline to 88,000 person-years in fiscal year 2004 and to about 15,000 person-years by 2008. If the number of reservists called to active duty were to remain at current levels over the 2004-2008 period, the cost of implementing section 208 would be significantly greater. Based on the above assumptions about the future size of the reserve force, CBO estimates that an average of about 13,000 federal employees will be on active-duty military service in fiscal year 2004, diminishing to approximately 2,000 by 2008.

NASA Personnel and Workforce Practices. Subtitle B would allow NASA to modify its personnel and workforce practices in several ways. NASA would be allowed to pay higher amounts to attract and retain individuals with special expertise, exchange personnel with industrial firms, and expand the use of limited term appointments. In addition, the bill would authorize the appropriation of \$10 million a year for a new science and technology

scholarship program. Based on information from NASA, CBO estimates that implementing this subtitle would cost \$15 million to \$20 million a year, depending on how extensively the agency uses some of the new authorities.

Direct Spending

CBO estimates that one section of H.R. 1836 would increase direct spending by \$206 million over the 2004-2013 period. That cost is displayed in the following table and described below.

Estimated Direct Spending Effect of H.R. 1836

	By Fiscal Year, In Millions of Dollars									
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Change in Civil Service										
Retirement Benefits										
Estimated Budget Authority	4	10	14	18	21	24	26	28	30	31
Estimated Outlays	4	10	14	18	21	24	26	28	30	31

Civil Service Retirement Benefits for Part-Time Service. Section 202 would alter the way retirement benefits under the Civil Service Retirement System (CSRS) are calculated for workers with part-time service. The bill would apply to workers who performed work prior to April 7, 1986, have some part-time service, and retire after the bill is enacted. Based on information from OPM, CBO estimates that this provision would cost \$4 million in 2004, \$67 million over the 2004-2008 period, and \$206 million over the 2004-2013 period.

Under current law, benefits for CSRS workers with part-time service are calculated using a two-step process. For workers with service prior to April 7, 1986, the current formula uses the highest salary the worker actually earned to reflect the part-time employment. For work on or after April 7, 1986, the formula uses a deemed salary (what the worker would have been earning if the worker had been working full time) to determine benefits and applies a pro-rata factor to adjust for part-time service. In effect, the current formula tends to treat new retirees with part-time service early in their careers more favorably than those whose part-time service comes at the end of their careers.

Section 202 would calculate CSRS benefits for all part-time service according to the formula currently used to determine benefits for service performed on or after April 7, 1986. To ensure that benefits under the new formula would not be smaller than benefits calculated

under the current formula, part-time service performed prior to April 7, 1986, would be credited as full time. CBO estimates this provision would affect benefits for several thousand new CSRS retirees each year. Depending on an individual employee's work history, benefits for those retirees could be more than 30 percent higher than they would be if calculated under the current formula.

Federal Long-Term Care Insurance Program. Section 207 would expand eligibility for the federal long-term care insurance program to former employees of the District of Columbia, former employees who have not attained the minimum age to qualify as annuitants, and retired reservists who have not reached the age of 60. CBO estimates that this provision would have no significant net cost.

The federal government does not contribute to enrollees' premiums for this program, and the private insurers are required to reimburse OPM for its expenses in administering the plan. Therefore, net federal spending for the long-term care insurance program is insignificant. Under the bill, the federal government would incur some new costs to inform additional people of their eligibility (primarily consisting of postage and printing more brochures about plan choices) and to register new participants. Those additional costs would be charged to the insurance carriers and OPM would be reimbursed for its expenses.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 1836 would authorize the Secretary to appoint older Americans to positions in the excepted service, and—notwithstanding any other provision of law—protect any retirement benefits they may be receiving from being reduced as a result of that appointment. To the extent that under current law retirement benefits provided by state, local, or tribal governments might be reduced for a beneficiary hired by the Secretary, enacting this provision would prohibit such reductions and thereby impose an intergovernmental mandate as defined in UMRA. However, according to the National Association of State Retirement Administrators, few, if any, jurisdictions require such benefit reductions under current law. Therefore, CBO estimates that any costs to state, local, or tribal governments from the mandate would be insignificant and would not exceed the threshold established in UMRA (\$59 million in 2003, adjusted for inflation).

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 1836 contains no new private-sector mandates as defined in UMRA.

PREVIOUS CBO ESTIMATE

On May 1, 2003, CBO transmitted a cost estimate for S. 593, the Reservists Pay Security Act of 2003, as introduced by Senator Richard J. Durbin on March 11, 2003, which is similar to section 212 of H.R. 1836. However, S. 593 would authorize a retroactive pay differential for federal employees who, as members of the uniformed services or National Guard, were called to active duty military service since September 11, 2001; H.R. 1836 would not. Therefore, the estimated costs of section 212 are lower than those for S. 593.

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